

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD HAROLD YOUNG,

Petitioner,

v.

ELDON VAIL,

Respondent.

Case No. C10-5857BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 15) and Petitioner’s objections to the R&R (Dkt. 17).

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

In this case, Judge Creatura concluded that Petitioner was not entitled to an evidentiary hearing, that the petition was untimely, and that the petition was not subject to equitable tolling. With regard to the evidentiary hearing, Judge Creatura found and concluded as follows:

Petitioner relies on established constitutional law, the factual predicates were available at trial, and the facts do not establish that no reasonable fact finder would have found the applicant guilty. Accordingly, the court concludes that an evidentiary hearing is not necessary to decide this case.

1 R&R at 2-3. Petitioner has failed to show that any of these finding or the conclusion are
2 erroneous. Therefore, the Court adopts Judge Creatura's recommendation that an
3 evidentiary hearing is not necessary to decide this petition.


4 With regard to the untimeliness of the petition and equitable tolling, Judge Creatura
5 found that the petition was filed after the 1-year period of limitation had run and that
6 Petitioner had failed to show extraordinary circumstance beyond his control that prevented
7 him from timely filing his petition. Dkt. 15 at 4-5. Judge Creatura recommended dismissing
8 the petition as time barred. *Id.* at 5. Petitioner objects on the grounds that he was
9 transferred multiple times and had inadequate access to legal materials. Dkt. 17 at 5. These
10 allegations fail to meet the standard of extraordinary circumstances that would make it
11 impossible to file a petition. *Calderon v. United States District Court for Central*
12 *District of California*, 128 F.3d 1283, 1288-89 (9th Cir. 1997). Therefore, the Court adopts
13 Judge Creatura's recommendation that the petition be dismissed as time barred.

14 Petitioner's remaining objections go to the merits of his petition and will not be
15 addressed as his petition is time barred.

16 Therefore, the Court having considered the R&R, Petitioner's objections, and the
17 remaining record, does hereby find and order as follows:

- 18 (1) The R&R is **ADOPTED**; and
19 (2) This action is **DISMISSED**.

20 DATED this 12th day of May, 2011.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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